



Civil Justice Committee Meeting

**October 19, 2005
9:00 AM – 12:00 PM
24 House Office Building**

**Allan G. Bense
Speaker**

**Mark Mahon
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Civil Justice Committee

Start Date and Time: Wednesday, October 19, 2005 09:00 am

End Date and Time: Wednesday, October 19, 2005 12:00 pm

Location: 24 HOB

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 3 Florida Birth-Related Neurological Injury Compensation Plan by Berfield

HB 5 Residential Tenancies by Gannon

HB 109 Temporary Custody of a Child by an Extended Family Member or Putative Father by Anderson

HB 157 Homestead Assessments by Littlefield

NOTICE FINALIZED on 10/07/2005 11:49 by Hay.Tracey

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 3 Florida Birth-Related Neurological Injury Compensation Plan
SPONSOR(S): Berfield; Goldstein
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Kruse	Bond
2) Health Care General Committee			
3) Finance & Tax Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

The Florida Birth-Related Neurological Injury Compensation Plan (plan) is the alternative to medical malpractice claims for birth-related neurological injuries. The plan provides compensation and other services to persons with birth-related neurological injuries. The benefits are more restricted than the remedies that would be provided by tort law, but a claimant is not required to prove malpractice. One issue that arises in cases to determine whether a family is required to file for benefits under the plan is whether the mother was properly notified regarding the plan.

This bill provides that the Division of Administrative Hearings has the exclusive jurisdiction to decide whether the statutory notice provision has been met.

Additionally, the bill authorizes the Florida Birth-Related Neurological Injury Compensation Association (NICA), which administers the plan, to contract with the State Board of Administration to invest and reinvest plan funds. NICA currently has authority to invest plan funds, and the bill provides that the State Board of Administration is one of the entities with whom NICA may contract for this service.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Florida Birth-Related Neurological Injury Compensation Plan

The Florida Birth-Related Neurological Injury Compensation Plan (the "plan") was enacted by the Legislature in 1988.¹ Currently, Virginia is the only other state in the nation that has a no-fault coverage plan that is similar to Florida's plan.² The plan was created to provide compensation, long-term medical care, and other services to persons with birth-related neurological injuries. Although the benefits paid under the plan are more restricted than the remedies provided by tort law, the plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing to resolve the claim.³

A "birth-related neurological injury" as defined in s. 766.302(2), F.S., is an injury to the brain or spinal cord of a live infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth caused by oxygen deprivation or by mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital. The injury must render the infant permanently and substantially mentally and physically impaired.

Florida Birth-Related Neurological Injury Compensation Association (NICA)

The entity charged with administering the plan is the Florida Birth-Related Neurological Injury Compensation Association (NICA or association). Under s. 766.315(4), F.S., NICA's duties include:

- Administering the plan;
- Administering the funds collected;
- Reviewing and paying claims;
- Directing the investment and reinvestment of any surplus funds over losses and expenses;
- Reinsuring the risks of the plan in whole or in part;
- Suing and being sued, appearing and defending, in all actions and proceedings in its name; and
- Taking such legal action as may be necessary to avoid payment of improper claims.⁴

The funding for the plan is derived from an appropriation by the Legislature when the plan was created and annual fees paid by physicians and hospitals.⁵

The plan pays, on behalf of a qualifying infant:

- Necessary and reasonable care, services, drugs, equipment, facilities, and travel;⁶

¹ Chapter 88-1, ss. 60-75, L.O.F., was enacted by the Legislature in an attempt to stabilize and reduce malpractice insurance premiums for physicians practicing obstetrics, according to the legislative findings and intent cited in s. 766.301(1)(c), F.S.

² Governor's Select Task Force on Healthcare Professional Liability Insurance, *Report and Recommendations*, p. 307 (2003).

³ See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).

⁴ Section 766.315(4), F.S.

⁵ Section 766.314, F.S., requires non-participating physicians to pay \$250 per year, participating physicians to pay \$5,000 per year, and hospitals to pay \$50 per infant delivered during the prior year.

⁶ Expenses that can be compensated by state or federal governments, or by private insurers, are not covered by the plan.

- One-time cash award, not to exceed \$100,000, to the infant's parents or guardians;⁷
- Death benefit of \$10,000 for the infant; and
- Reasonable expenses for filing the claim, including attorney's fees.

Filing a Claim for Benefits

A claim for benefits under the plan must be filed within five years of the birth of the infant alleged to be injured.⁸ The parents or guardian of the infant files a petition with the Division of Administrative Hearings (DOAH). DOAH serves a copy of the petition upon NICA, the physician(s) and hospital named in the petition, and the Division of Medical Quality Assurance.⁹ Within ten days of filing the petition, the parents or guardian must provide NICA all medical records, assessments, evaluations and prognoses, documentation of expenses, and documentation of any private or governmental source of services or reimbursement relative to the impairments. An administrative law judge (ALJ) from DOAH will set a hearing on the claim to be conducted 60-120 days from the petition filing date.

The issue of whether the claim for compensation is covered by the plan is determined exclusively in an administrative proceeding.¹⁰ The ALJ presiding over the hearing makes the following determinations:

- Whether the injury claimed is a birth-related neurological injury;
- Whether obstetrical services were delivered by a participating physician; and
- How much compensation, if any, is awardable under s. 766.31, F.S.¹¹

If the ALJ determines that an injury meets the definition of a birth-related neurological injury, compensation from the plan is the exclusive legal remedy.¹² If the ALJ determines that the injury alleged is not a birth-related neurological injury or that the obstetrical services were not delivered by a participating physician, the ALJ will enter an order to that effect. The ALJ may also bifurcate the proceeding and address compensability and notice first, and address an award, if any, in a separate proceeding.¹³ If any party chooses to appeal the ALJ's order under s. 766.309, F.S., the appeal must be filed in the District Court of Appeal.¹⁴

Notice Requirement

Section 766.316, F.S., requires any hospital with a participating physician on its staff, and each participating physician under the plan to provide notice to an obstetrical patient as to the limited no-fault alternative for birth-related neurological injuries. The notice must:

- be provided on forms furnished by the association; and
- include a clear and concise explanation of a patient's rights and limitations under the plan.

This section also provides that notice does not need to be provided to a patient when the patient has an emergency medical condition or when notice is not practicable. This section does not specifically address the effect of failure to provide notice to the obstetrical patient.

Courts have addressed the issue of who determines whether notice has been properly provided. Four of the five District Courts of Appeal have held that the ALJ has the exclusive jurisdiction to determine whether notice has been properly provided. However, in the Second District Court of Appeal, in

⁷ Often the award is paid out over time to assist the parents or guardians in making necessary modifications to living quarters to accommodate a disabled child.

⁸ Section 766.313, F.S.

⁹ Only infants born in a hospital are covered by the plan.

¹⁰ Section 766.301(1)(d), F.S.

¹¹ Section 766.309(1), F.S. The determination of notice is not explicitly provided for in this section.

¹² Section 766.303(2), F.S., only allows a civil action in place of a claim under the plan where there is clear and convincing evidence of bad faith or malicious purpose or willful and wanton disregard of human rights, safety, or property.

¹³ Section 766.309(4), F.S.

¹⁴ Section 766.311(1), F.S.

Bayfront Medical Center, Inc. v. NICA, 893 So. 2d 636 (Fla. 2nd DCA 2005), the court affirmed its approach that the ALJ's jurisdiction extends only to the determination of whether the child suffered a neurological injury that was compensable under the plan. The court recognized the conflict with the other district courts of appeal, but declined to recede from its holding and certified the conflict to the Florida Supreme Court.¹⁵ In *Tabb v. Florida Birth-Related Neurological Injury Compensation Association*, 880 So. 2d 1253, 1256 (Fla. 1st DCA 2004), the First District Court of Appeal reasoned that "[i]n order to 'hear and determine' a claim, an ALJ must, almost of necessity, decide whether notice was given, because if no notice was given, the exclusivity provision of the statute does not apply." In addition, the court pointed to recent amendments to the statute that implicitly acknowledge the existing case law indicating that an ALJ has jurisdiction to determine whether notice was provided.

Effect of Bill

Notice

This bill amends s. 766.309(1), F.S., to provide that it is the exclusive jurisdiction of an administrative law judge of DOAH to determine whether the notice requirement in s. 766.316, F.S., has been met.

The bill also states that it is the intent of the Legislature that the amendment contained in this act clarifies that since July 1, 1998, the administrative law judge has had the exclusive jurisdiction to make factual determinations as to whether the notice requirements in s. 766.31, F.S., are satisfied.

Contracts for Investment

This bill also authorizes NICA, which administers the plan, to contract with the State Board of Administration¹⁶ to invest and reinvest plan funds. NICA currently has the authority to invest plan funds, and this bill authorizes NICA to utilize the State Board of Administration to provide NICA an additional source for managing investments at no cost to the state.

C. SECTION DIRECTORY:

Section 1. Amends s. 766.309, F.S., to provide that an administrative law judge of DOAH has the exclusive jurisdiction to determine whether the notice requirement in s. 766.316, F.S., has been met.

Section 2. Provides that it is the intent of the Legislature that the amendment contained in this act clarifies that since July 1, 1998, an administrative law judge of DOAH has had the exclusive jurisdiction to make factual determinations as to whether the notice requirements in s. 766.31, F.S., are satisfied.

Section 3. Amends s. 766.315, F.S., to authorize the State Board of Administration to invest and reinvest funds for NICA.

Section 4. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹⁵ *Bayfront* at 637, 638.

¹⁶ The State Board of Administration (SBA) is the professional investment organization for Florida. The SBA manages 25 funds, comprising more than \$130 billion in assets under management at the end of fiscal year 2004.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Florida courts have found that the Legislature has the authority to apply law retroactively as long as the new law does not impair a vested right.¹⁷ Courts have used a weighing process to decide whether to sustain the retroactive application of a statute that has three considerations: the strength of the public interest served by the statute, the extent to which the right affected is abrogated, and the nature of the right affected.¹⁸ In this instance, the bill does not appear to impair a vested right of a claimant or defendant, but may rather seek to serve the public interest. The bill provides that an administrative law judge (ALJ) of DOAH has exclusive jurisdiction to determine if the notice requirements were met.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.

¹⁷ *Dept. of Transportation v. Knowles*, 402 So. 2d 1155, 1157 (Fla. 1981). *Village of El Portal v. City of Miami Shores*, 362 So. 2d 275, 277 (Fla. 1978); *McCord v. Smith*, 43 So. 2d 704, 708-709 (Fla. 1949).

¹⁸ *Supra Knowles* at 1158.

1 A bill to be entitled

2 An act relating to the Florida Birth-Related Neurological
3 Injury Compensation Plan; amending s. 766.309, F.S.;
4 requiring the administrative law judge to determine
5 whether factual determinations regarding required notice
6 to obstetrical patients of participation in the plan are
7 satisfied; providing exclusive jurisdiction to make such
8 determinations; providing legislative intent; amending s.
9 766.315, F.S.; authorizing the State Board of
10 Administration to invest and reinvest funds held on behalf
11 of the plan pursuant to certain requirements; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Paragraph (d) is added to subsection (1) of
17 section 766.309, Florida Statutes, to read:

18 766.309 Determination of claims; presumption; findings of
19 administrative law judge binding on participants.--

20 (1) The administrative law judge shall make the following
21 determinations based upon all available evidence:

22 (d) Whether, if raised by the claimant or other party, the
23 factual determinations regarding the notice requirements in s.
24 766.316 are satisfied. The administrative law judge has the
25 exclusive jurisdiction to make these factual determinations.

26 Section 2. It is the intent of the Legislature that the
27 amendment to s. 766.309, Florida Statutes, contained in this
28 act, clarifies that since July 1, 1998, the administrative law

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judge has had the exclusive jurisdiction to make factual determinations as to whether the notice requirements in s. 766.316, Florida Statutes, are satisfied.

Section 3. Paragraph (e) of subsection (5) of section 766.315, Florida Statutes, is amended to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.--

(5)

(e) Funds held on behalf of the plan are funds of the State of Florida. The association may only invest plan funds in the investments and securities described in s. 215.47, and shall be subject to the limitations on investments contained in that section. All income derived from such investments will be credited to the plan. The State Board of Administration may invest and reinvest funds held on behalf of the plan in accordance with the trust agreement approved by the association and the State Board of Administration and within the provisions of ss. 215.44-215.53.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5 Residential Tenancies
SPONSOR(S): Gannon
TIED BILLS: none **IDEN./SIM. BILLS:** none

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Bond	Bond
2) Business Regulation Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill amends residential landlord-tenant law to:

- Provide that a tenant who has obtained a permanent injunction against domestic violence, repeat violence, sexual violence, or dating violence, may obtain an early termination of the lease.
- Provide that a landlord may recover possession of a dwelling unit 45 days after the death of a tenant.
- Provide that a landlord and tenant may agree in the rental agreement to liquidated damages and early termination fees in the event that the rental agreement is broken.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill both increases and decreases the ability of landlords and tenants to enter into contract terms as they see fit.

Promote personal responsibility -- This bill requires financial responsibility of a perpetrator of domestic violence.

Empower families -- This bill will serve or benefit families that are suffering from the effects of domestic violence.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs residential landlord-tenant law.¹ A lease is an agreement to use real property for a certain length of time. By definition, all residential tenancies must end. Most end at the conclusion of the agreed-upon lease term with the tenant having paid all rents due. Section 83.595, F.S., governs the financial obligation of the tenant where the tenant's occupation of the property ends prior to the agreed upon term of the lease.

Section 83.595, F.S., provides that a landlord who has retaken possession of a rental property before the end of the lease term may:

- Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;
- Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from renting to another tenant; or
- Stand by and do nothing, holding the tenant liable for the rent as it comes due.

There are several circumstances whereby a tenant can terminate the lease early, and yet have limited or no liability for rent through the end of the term of the lease. Those situations are:

- Where the landlord has breached a material term of the lease or has failed to provide maintenance required by statute, and the tenant has given the landlord notice and an opportunity to cure. See ss. 83.51(1)² and 83.56(1), F.S.
- If the property has been substantially damaged or destroyed. See s. 83.63, F.S.
- If the tenant is an active duty member of the armed forces, and is either transferred or discharged from service. See s. 83.682, F.S.

Current law does not provide for early lease termination for victims of domestic violence.

¹ Part II of ch. 83, F.S.

² Section 83.51(1) requires a landlord to comply with all applicable building, housing, and health codes, and maintain all structural components and plumbing in good repair.

Section 83.59(3), F.S., provides that a landlord may not recover possession of a rental unit unless the tenant has voluntarily surrendered or abandoned the premises, or the landlord obtains a court order awarding possession. Section 83.67, F.S., provides that it is unlawful for a landlord to change the locks or remove the tenant's belongings except upon surrender, abandonment, or eviction. A landlord who violates this section is liable to the tenant for damages equal to 3 months rent, plus costs and attorneys fees. This punitive section is intended to discourage landlords from "self-help evictions."³ Current law is unclear whether the death of a tenant is abandonment or surrender of the premises, and accordingly some cautious landlords resort to formal eviction proceedings upon death of a tenant in order to avoid the penalty provisions of s. 83.67, F.S.

It is not uncommon for the parties to a contract to agree to a liquidated damages clause. A liquidated damages clause provides, in advance, an agreement as to how much one party will pay the other for breach of the contract. Landlord-tenant law, as applied before enactment of the Florida Residential Landlord and Tenant Act, provided that a liquidated damages clause in a lease agreement will be enforced only if such damages are intended to reimburse the landlord for expected damages, not if such damages are in the nature of a penalty intended solely to coerce performance under the lease.⁴

Current law does not allow a residential lease to contain an early termination clause that includes a provision for liquidated damages. Section s. 83.47(1)(a), F.S., provides that any provision in a rental agreement is void and unenforceable to the extent that it purports to waive or preclude the rights, remedies, or requirements set forth in the Florida Residential Landlord and Tenant Act. Section 83.595(1), F.S., provides the landlord's remedies that are available should the tenant breach the lease and the landlord has retaken possession of the rental unit. In 2004, a circuit court in Palm Beach found that the remedies set forth in s. 83.595(1), F.S., are exclusive and may not be modified by agreement of the parties. The class action judgment invalidated a liquidated damages clause in a landlord's standard lease agreement.⁵

Injunctions against Domestic, Repeat, Dating, or Sexual Violence

Section 741.30(1)(a), F.S., creates a cause of action for an injunction for protection against domestic violence, and provides that a person who is the victim of domestic violence, as defined in s. 741.28, F.S.,⁶ or who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has standing to seek an injunction against domestic violence. A domestic violence injunction may be sought by family or household members, and "[n]o person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse."⁷

Courts have adopted a two-pronged test for determining whether a relationship is such that the court can properly issue a domestic violence injunction against one of the parties.⁸ First, the petitioner must have a familial or domestic relationship with the respondent that falls within the range of relationships

³ *Badaraco v. Sun Coast Towers V Associates*, 676 So.2d 502 (Fla. 3rd DCA 1996).

⁴ *Hyman v. Cohen*, 73 So. 2d 393, 398-99 (Fla. 1954) (defining a "penalty" at page 401 as a sum "so grossly disproportionate to any damages that might reasonably be expected to follow from a premature termination of the lease as to show that the parties could have intended only to induce full performance thereunder."). See also *Lefemine v. Baron*, 573 So. 2d 326, 328 (Fla. 1991) (holding that an option to either accept liquidated damages or to sue for the full amount due is, in effect, a penalty).

⁵ Order dated December 1, 2004, in *Yates v. Equity Residential Properties Trust*, 15th Judicial Circuit in and for Palm Beach County, Florida, Case No. 502002CA014116XXOCAB. The case is currently on appeal. *Equity Residential Properties Trust v. Tammy Yates*, 4th District Court of Appeal, Case No. 4D05-125. Equity's standard lease had two separate fees that, in effect, charged a tenant 3 months rent as a penalty for early termination of the lease.

⁶ "'Domestic violence' means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." s. 741.28(2), F.S.

⁷ Section 741.30(1)(e), F.S.

⁸ *Kokoris v. Zipnick*, 738 So. 2d 369, 370 (Fla. 4th DCA 1999).

listed in the statute, and second, the parties must have resided together, either in the past or present, as a family or household in the same dwelling unit.⁹

Section 784.046, F.S., defines violence, repeat violence, sexual violence, and dating violence, and creates separate causes of action for repeat, sexual, and dating violence. Any person who is the victim of repeat violence,¹⁰ or the parent of a minor child who lives at home and is the victim of repeat violence, has standing to file a sworn petition for an injunction against repeat violence.¹¹ "Dating violence" is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature."¹² Any person who has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence, or who is the victim of dating violence and has reasonable cause to fear imminent future dating violence, or who is the parent of a minor child living at home and is in need of protection from dating violence, may file a petition for an injunction to protect against dating violence.¹³

A person who is the victim of sexual violence,¹⁴ or the parent of any minor child living at home who is the victim of sexual violence, has standing to file a petition for a protective injunction against sexual violence if:

- The person has reported the sexual violence to a law enforcement agency and is cooperating with any criminal proceeding against the respondent; or
- The person who committed the sexual violence was sentenced to a term of imprisonment for the sexual violence, and such sentence expires or shall expire within 90 days of the filing of the petition.¹⁵

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence and it is also given broad authority to order such other relief as is necessary to protect the victim.¹⁶ An order granting an injunction must be supported by competent, substantial evidence.¹⁷ Either party may move to have the injunction modified or dissolved at any time, and the terms of the injunction remain in effect until modified or dissolved.¹⁸

Effect of Bill

Domestic Violence

This bill creates s. 83.683, F.S., entitled "Termination of rental agreement by a victim of domestic violence, repeat violence, sexual violence, or dating violence." The new section contains the following definitions:

- "Permanent injunction" means an injunction for protection against domestic violence, issued under s. 741.30(6), F.S., or an injunction for protection against repeat violence, sexual violence,

⁹ *Id.*

¹⁰ "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have occurred within six months of the filing of the petition, and which were directed against the petitioner or an immediate member of the petitioner's family. S. 784.046(1)(b), F.S.

¹¹ Section 784.046(2)(a), F.S.

¹² Section 784.046(1)(d), F.S.

¹³ Section 784.046(2)(b), F.S.

¹⁴ Sexual violence means one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, sexual performance by a child, or any forcible felony wherein a sexual act is committed or attempted, regardless of the presence or absence of criminal charges resulting from the incident. s. 784.046(1)(c), F.S.

¹⁵ Section 784.046(2)(c), F.S.

¹⁶ Sections 784.046(6)(a), and 784.046(7)(a)-(b), F.S.

¹⁷ *Forrest v. Wilson*, 889 So.2d 124, 124-25 (Fla. 1st DCA 2004).

¹⁸ Sections 784.046(7)(c) and 784.046(10), F.S.

or dating violence, issued under s. 784.046(7), F.S., regardless of whether a motion for rehearing or a notice of appeal is filed.

- "Respondent" means a person against whom a permanent injunction for protection against domestic violence under s. 741.30(6), F.S., or a permanent injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046(7), F.S., has been issued.
- "Victim" means an adult, or the parent or guardian of a minor, who has been granted a permanent injunction against domestic violence, as defined in s. 741.28(2), F.S., or who has been granted a permanent injunction against sexual violence, dating violence, or acts of repeat violence, as defined in s. 784.046, F.S.
- "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.

The bill provides that a victim may choose to terminate a rental agreement and vacate a dwelling unit if the victim provides the landlord with a copy of the permanent injunction, and written notice of the victim's intent to terminate the lease, within 15 days of the issuance of the injunction.

A victim who utilizes this section to terminate a lease is obligated to report the incident to law enforcement authorities, must comply with investigation and prosecution of the case, and must testify truthfully at trial. If the respondent is convicted, and the lease contains a liquidated damages provision as described in s. 83.595(1)(d) (created by this bill, see below), then only respondent is liable to the landlord for such liquidated damages. If, however, the respondent is not convicted, the victim may be liable to the landlord for such liquidated damages.

A victim who has given notice under this provision must vacate the rental unit no later than 30 days after the landlord receives notice, or earlier if the lease expires by its own terms. After the victim vacates the dwelling unit, the landlord must send notice of any claim against the security deposit to both the victim and respondent.

After a victim moves out, the lease remains in place, except that the victim is not liable for "future obligations of the lease or tenancy." All tenants, including the victim, are liable for damages to the dwelling unit that exceed normal wear and tear, except that the victim is not responsible for any damage to the unit that occurred during the act of violence that led to the filing for an injunction. This provision may not be construed to prohibit the right of the landlord to evict a tenant for participation in an illegal activity.

If the respondent or any other tenant fails to retake possession of the premises within 15 days after the victim indicated as the date that he or she would vacate, and the rent is unpaid, the dwelling unit will be deemed abandoned and the landlord may retake possession and may dispose of any abandoned property in an way the landlord sees fit.

The victim and respondent may not agree to waive or modify the provisions of this section. This section applies to all residential rental agreements entered into on or after July 1, 2006.

Death of Tenant

This bill amends s. 83.59, F.S., to allow a landlord to retake possession of a dwelling unit 45 days after the death of a tenant, when the rent is unpaid and the landlord has not been notified of the existence of a probate estate or personal representative.

Termination Fees (liquidated damages)

This bill amends s. 83.595, F.S., to provide an additional measure of damages that a tenant may be obligated to pay a landlord upon early termination of the lease.

This bill adds that landlords and tenants may choose to contract for liquidated damages for breach of a rental agreement and a specified fee for early termination of a rental agreement. The liquidated damages or early termination fee must be specified in the rental agreement, may require up to 60 days notice, and may not exceed 2 months' rent in addition to any rent due and "other charges" due under the rental agreement to the end of the month.¹⁹ If a landlord chooses to include such a liquidated damages clause, an early termination clause, or both, in the rental agreement, the landlord may not exercise any of the remedies listed in s. 83.595(1)(a)-(c). This subsection does not apply when the breach is failure to give notice at the end of the rental agreement.

C. SECTION DIRECTORY:

Section 1 creates s. 83.683, F.S., providing for early termination of a lease without penalty for victims of domestic violence.

Section 2 amends s. 83.59, F.S., to provide that a landlord may retake possession of a rental unit after death of a tenant under certain circumstances.

Section 3 amends s. 83.595, F.S., to allow landlords and tenants to agree to liquidated damages.

Section 4 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of this bill may have a negative fiscal impact upon a landlord who is required to terminate a lease and who cannot timely replace the tenant.

D. FISCAL COMMENTS:

None.

¹⁹ For a tenant announcing his or her intent to immediately vacate, such a clause could be drafted by a landlord to effectively charge the tenant a total of between 4 and 5 months' rent as a cost for early termination (the 60 days notice plus 2 months' rent damages plus rent to the end of the month).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The definition of "permanent injunction" at lines 37-42 appears to refer to a final judgment of a court issuing an injunction after notice to the respondent and an opportunity for the respondent to be heard, by use of cross-reference to ss. 741.30(6) and 784.046(7), F.S. However, those two subsections that deal with what is commonly referred to as a permanent injunction also include provisions that refer to temporary injunctions that may be issued upon the filing of a petition for an injunction. The definition of permanent injunction could be clarified in this regard.

At line 67, the bill refers to conviction, but does not specify the crime that the respondent must be convicted of for the provision to apply.

Lines 78-91 are not clear. They imply, but do not specifically provide, that a victim's financial obligation for continuing lease payments ends when the victim moves out after notice. Also, as written, the victim would be liable for damage to the rental property that occurs after the victim has moved out.

The amendment to s. 83.59, F.S., is not clear that death is a form of abandonment of the tenancy. It is possible that, without amendment, a landlord relying upon s. 83.59, F.S., as amended by this bill, may still be financially liable for unlawful self-help eviction under s. 83.67(5), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a

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1 A bill to be entitled

2 An act relating to residential tenancies; creating s.

3 83.683, F.S.; providing definitions; providing for early

4 lease termination if a victim of domestic violence, repeat

5 violence, sexual violence, or dating violence elects to

6 leave a residential rental property; providing

7 requirements for termination; requiring the victim to

8 comply with any criminal investigation and prosecution

9 related to such offenses; providing that a residential

10 lease shall continue in all terms and conditions for all

11 tenants except the victim; providing that all tenants,

12 including the victim and respondent, are responsible for

13 damage to the property exceeding ordinary wear and tear,

14 except that the respondent shall be responsible for the

15 costs of damage resulting from any incident of domestic

16 violence; providing for repossession by the landlord in

17 case of abandonment by other tenants; providing that an

18 agreement between the victim and the respondent may not

19 waive or modify certain rights of victims; providing

20 applicability; amending s. 83.59, F.S.; providing

21 conditions under which a landlord may reclaim possession

22 of a dwelling unit after the tenant has died; amending s.

23 83.595, F.S.; allowing a rental agreement to provide for

24 liquidated damages upon breach and for a fee for the

25 tenant to obtain an early termination of the rental

26 agreement in certain circumstances; providing an effective

27 date.

28

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 83.683, Florida Statutes, is created to read:

83.683 Termination of a rental agreement by a victim of domestic violence, repeat violence, sexual violence, or dating violence.--

(1) As used in this section, the term:

(a) "Permanent injunction" means an injunction for protection against domestic violence, issued under s. 741.30(6), or an injunction for protection against repeat violence, sexual violence, or dating violence, issued under s. 784.046(7), regardless of whether a motion for rehearing or a notice of appeal is filed.

(b) "Respondent" means a person against whom a permanent injunction for protection against domestic violence under s. 741.30(6) or a permanent injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046(7) has been issued.

(c) "Victim" means an adult, or the parent or guardian of a minor, who has been granted a permanent injunction against domestic violence, as defined in s. 741.28(2), or who has been granted a permanent injunction against sexual violence, dating violence, or acts of repeat violence, as defined in s. 784.046.

(d) "Conviction" has the same meaning as in s. 921.0021.

(2)(a) A victim may elect to terminate a rental agreement and vacate the dwelling unit if the victim gives the landlord written notice of the victim's intent to terminate the lease and

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a copy of the permanent injunction. The victim must give the landlord the notice and copy of the injunction no later than 15 days after the injunction is entered.

(b) The victim must report the incident of domestic violence, as defined in s. 741.28(2), or sexual violence, dating violence, or acts of repeat violence, as defined in s. 784.046, to the appropriate authorities and must comply with any criminal investigation and prosecution of any such incident, including testifying truthfully at a criminal trial. If the victim complies with the criminal investigation and prosecution and the respondent is convicted, the respondent shall be liable for the entire amount of liquidated damages pursuant to s. 83.595(1)(d), the respondent shall reimburse the victim for any amount the victim has paid pursuant to s. 83.595(1)(d), and subsection (3) shall apply. If the respondent is not convicted, subsection (3) shall apply.

(c) The victim must vacate the dwelling unit on the date the lease expires or 30 days after the landlord receives notice of the termination, whichever comes first.

(d) The landlord shall mail the notice required by s. 83.49 to both the victim and the respondent.

(3) The lease or tenancy shall continue in all respects subject to the terms and conditions of the lease or tenancy, except that the victim shall be released from all future obligations of the lease or tenancy; however, all tenants, including the victim, the respondent, and other tenants, are responsible for damages to the dwelling unit that exceed ordinary wear and tear, excluding those damages incurred as a

85 result of any incident of domestic violence, sexual violence,
86 dating violence, or repeat violence, in which case the cost
87 shall be the sole responsibility of the respondent. Nothing in
88 this subsection shall be interpreted so as to impair the right
89 of any landlord to evict any tenant in accordance with any terms
90 and conditions of the lease or tenancy that provide for eviction
91 in the event of a tenant's participation in unlawful activity.

92 (4) If the respondent or any other tenant who is a party
93 to the rental agreement fails to retake possession of the
94 dwelling unit within 15 days after the date the victim gave the
95 landlord as the date the victim intended to vacate the dwelling
96 unit and the rent is unpaid, the dwelling unit shall be
97 considered abandoned and the landlord may retake possession and
98 dispose of any abandoned property in any way the landlord sees
99 fit.

100 (5) The provisions of this section may not be waived or
101 modified by agreement between the victim and the respondent.

102 (6) This section applies to all rental agreements subject
103 to this part and executed on or after July 1, 2006.

104 Section 2. Paragraph (d) is added to subsection (3) of
105 section 83.59, Florida Statutes, to read:

106 83.59 Right of action for possession.--

107 (3) The landlord shall not recover possession of a
108 dwelling unit except:

109 (d) When, 45 days after the date of death of the tenant,
110 the rent is unpaid and the landlord has not been notified of the
111 existence of a probate estate or name and address of a personal
112 representative.

113 Section 3. Subsection (1) of section 83.595, Florida
114 Statutes, is amended to read:

115 83.595 Choice of remedies upon breach by tenant.--

116 (1) If the tenant breaches the rental agreement ~~lease~~ for
117 the dwelling unit and the landlord has obtained a writ of
118 possession, or the tenant has surrendered possession of the
119 dwelling unit to the landlord, or the tenant has abandoned the
120 dwelling unit, the landlord may:

121 (a) Treat the rental agreement ~~lease~~ as terminated and
122 retake possession for his or her own account, thereby
123 terminating any further liability of the tenant; ~~or~~

124 (b) Retake possession of the dwelling unit for the account
125 of the tenant, holding the tenant liable for the difference
126 between the rent ~~rental~~ stipulated to be paid under the rental
127 ~~lease~~ agreement and what, in good faith, the landlord is able to
128 recover from a reletting; ~~or~~

129 (c) Stand by and do nothing, holding the lessee liable for
130 the rent as it comes due; or

131 (d) Obtain liquidated damages upon breach and a fee for
132 the tenant to obtain an early termination of the rental
133 agreement, or both, if such had been provided for in the rental
134 agreement, upon the tenant's giving the landlord notice as
135 provided in the rental agreement of up to 60 days. The landlord
136 shall treat such a rental agreement as terminated and charge the
137 tenant liquidated damages or the early termination fee as
138 specified in the rental agreement, equal to not more than 2
139 months' rent, in addition to the unpaid rent and other charges
140 due under the rental agreement through the end of the month in

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141 which the landlord retakes possession of the dwelling unit. In
142 such event, the remedies set forth in paragraphs (a), (b), and
143 (c) are not available to the landlord. This paragraph shall not
144 apply when the breach is a failure to give notice at the end of
145 the rental agreement as provided in s. 83.575.

146 Section 4. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 5

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1

Council/Committee hearing bill: Civil Justice Committee

Representative(s) Gannon offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 83.683, Florida Statutes, is created to read:

83.683 Termination of a rental agreement by a victim of domestic violence, repeat violence, sexual violence, or dating violence.--

(1) As used in this section, the term:

(a) "Permanent injunction" means a final injunction for protection against domestic violence, issued under s. 741.30(6), or a final injunction for protection against repeat violence, sexual violence, or dating violence, issued under s. 784.046(7), regardless of whether a motion for rehearing or a notice of appeal is filed.

(b) "Respondent" means a person against whom a permanent injunction has been issued.

(c) "Victim" means an adult, or the parent or guardian of a minor, who has been granted a permanent injunction.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 (2) (a) A victim may elect to terminate a rental agreement
23 and vacate the dwelling unit if the victim gives the landlord
24 written notice of the victim's intent to terminate the lease and
25 a copy of the permanent injunction. The victim must give the
26 landlord the notice and copy of the injunction no later than 15
27 days after the permanent injunction is entered.

28 (b) The victim must vacate the dwelling unit on the date
29 the lease expires or 30 days after the landlord receives notice
30 of the termination, whichever comes first.

31 (c) The landlord shall mail the notice required by s.
32 83.49(3) (a) to both the victim and the respondent. The notice
33 mailed to the respondent shall not reveal the victim's new
34 address.

35 (3) At the conclusion of the 30 day notice period, the
36 lease or tenancy shall continue in all respects subject to the
37 terms and conditions of the lease or tenancy, except that the
38 victim shall be released from all future obligations of the
39 lease or tenancy and that the victim shall not be liable for any
40 form of early termination fee. The victim is responsible up to
41 the conclusion of the 30 day notice period, and the respondent
42 and any other tenant are responsible through the end of the
43 lease term, for damages to the dwelling unit that exceed
44 ordinary wear and tear; however, any damages incurred as a
45 result of any incident of domestic violence, sexual violence,
46 dating violence, or repeat violence, shall be the sole
47 responsibility of the respondent.

48 (4) If the respondent or any other tenant on the rental
49 agreement fails to retake possession of the dwelling unit within
50 15 days after the date the victim gave the landlord as the date
51 the victim intended to vacate the dwelling unit, and if the rent
52 is unpaid, the dwelling unit shall be considered abandoned.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

53 (5) This rights and obligations of this section may not be
54 waived or modified.

55 (6) This subsection may not be interpreted to impair the
56 right of any landlord to evict any tenant in accordance with any
57 terms and conditions set forth that provide for eviction in the
58 event of a tenant participating in unlawful activity.

59 (7) This section applies to all rental agreements subject
60 to this part and executed on or after July 1, 2006.

61 Section 2. This act shall take effect July 1, 2006.

62
63 ===== T I T L E A M E N D M E N T =====

64 Remove the entire title and insert:

65 An act relating to residential tenancies; creating s. 83.683,
66 F.S.; providing definitions; providing for early lease
67 termination if a victim of domestic violence, repeat violence,
68 sexual violence, or dating violence elects to leave a
69 residential rental property; providing requirements for
70 termination; providing that a residential lease shall continue
71 in all terms and conditions for all tenants except the victim;
72 providing that all tenants, including the victim and respondent,
73 are responsible for damage to the property exceeding ordinary
74 wear and tear, except that the respondent shall be responsible
75 for the costs of damage resulting from any incident of domestic
76 violence; providing for repossession by the landlord in case of
77 abandonment by other tenants; providing that the provisions of
78 s. 83.683, F.S., may not be waived by agreement; providing
79 applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 109

Temporary Custody of a Child

SPONSOR(S): Anderson

TIED BILLS: None

IDEN./SIM. BILLS: SB 118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Kruse	Bond
2) Future of Florida's Families Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Chapter 751, F.S., provides a procedure whereby a court may order that a relative of a minor child may be granted temporary legal custody of the child.

This bill expands the definition of which family members are entitled to petition for temporary custody, requires additional information in a petition for temporary custody, and allows court modification of a temporary custody order.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families — The bill may provide more authority to a family member who is actually caring for a child by authorizing that family member to make certain types of decisions on the child's behalf without having to obtain approval from the child's legal guardian each time one of those decisions must be made. However, this bill may require a parent to participate in an adversarial legal proceeding to gain custody of his or her child.

B. EFFECT OF PROPOSED CHANGES:

Current Law

At times and for various reasons, a parent or parents of a minor child may be unable to provide care to that child. Chapter 751, F.S., provides that a relative or putative father who has the permission of the parents or who has physical custody of the child may be granted temporary legal custody of the child. Temporary custody is established in order to allow that person to consent to medical and dental care for the child, obtain copies of the child's records, enroll the child in school, grant or withhold consent for a child to be placed in special school programs, or to provide any necessary care to that child.¹ Because these children receive care from their extended family members, they are not considered dependent children, as defined in s. 39.01(14), F.S.

Section 751.011(1), F.S., defines "extended family" as a relative of the child who is the child's brother, sister, grandparent, aunt, uncle, or cousin. This definition, however, does not control who may seek temporary custody. Section 751.02, F.S., provides that any relative of a minor child who has the signed, notarized consent of the child's legal parents, or any relative of the child, including a putative father, with whom the child is presently living, may file a petition for temporary custody.

Section 751.03, F.S., provides that a petition for temporary custody must contain:

- The name, date of birth, and current address of the child;
- The names and current addresses of the child's parents;
- The names and current addresses of persons with whom the child has lived for the past 5 years;
- The places where the child has lived for the last 5 years;
- Information regarding any other custody proceedings in any state involving the child;
- The petitioner's contact information;
- The petitioner's relationship to the child, and for a putative father, the reasons for his belief that he is the natural father;
- The parents' consent or the factual situation of the child's current living situation with the petitioner; and
- The length of time that the petitioner is requesting temporary custody, with a statement of reasons supporting the request.²

If the parents do not object, the court must award temporary custody of the child to the petitioner if it is in the best interests of the child.³ If a parent objects, the court may only award temporary custody if the court finds by clear and convincing evidence that the parent or parents are unfit, i.e., that the parent has abused, abandoned, or neglected the child, as defined in ch. 39, F.S.⁴ Chapter 751, F.S.,

¹ Section 751.01(3), F.S.

² Section 751.03, F.S.

³ Section 751.05(2), F.S.

⁴ Section 751.05(3), F.S.

proceedings do not provide a parent the right to counsel under these circumstances as is provided under ch. 39, F.S. (See "Constitutional Issues" below). Once an order of temporary custody has been entered, a parent or both parents may petition the court at any time to terminate the temporary custody order, based upon either the consent of the parties or a finding that the parent is a fit parent.⁵

Chapter 751, F.S., does not specifically give a court authority to modify a temporary custody order, nor does it prohibit a court from modifying a temporary custody order.

Effect of Bill

The bill changes the definition of "extended family" in s. 751.011(1), F.S., to "extended family member." "Extended family member" is defined by the bill as:

- Any person who is a relative within the third degree, by blood or marriage, to the parent or stepparent of a child and who is caring for the child full-time in the role of substitute parent; or
- Relatives within the third degree by blood or marriage to the parent or stepparent of a child and who is caring full time for that child, and a half-brother or half-sister of that child, in the role of substitute parent.

Currently, extended family only includes a child's brother, sister, grandparent, aunt, uncle, or cousin. The new definition adds great-aunts, great-uncles, great-grandparents, and stepparents along with step-family members within the third degree of blood or marital relationship to the stepparent. However, by specifying which family members are entitled to petition for temporary custody, the bill also limits which family members may petition as well. A relative of the third-degree only extends to a first-cousin.

Additionally, this bill requires that the following additional information must be included in a petition for temporary custody:

- All information regarding the fitness of the parents to raise the child and information concerning whether the parent has abused, abandoned, or neglected the child;
- Any request for temporary or permanent child support, attorney's fees, costs, and disbursements;
- A statement of whether an order of protection governing the parties, or a party and a minor child of a party or the parties, is in effect, and if so, in what jurisdiction; and
- A statement that it is in the best interests of the child for the petitioner to have custody of the child.

This bill also provides that the parent or parents may petition for modification, in addition to termination, of an order granting temporary custody.

The effective date of the bill is July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 751.011(1), F.S., to change the definition of which family members are entitled to petition for temporary custody of a minor child.

Section 2. Amends s. 751.02, F.S., to provide that an extended family member may petition for temporary custody of a child under certain circumstances.

Section 3. Amends s. 751.03, F.S., to require additional information to be included in a petition for temporary custody, and to provide that only a putative father or extended family member may petition for temporary custody.

Section 4. Amends s. 751.05(7), F.S., to provide that either or both of the child's parents may petition to modify, as well as to terminate, an order granting temporary custody.

⁵ Section 751.05(7), F.S.

Section 5. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Chapter 751, F.S., does not require legal counsel to be appointed to represent the parents in a temporary custody proceeding. The proceeding is similar in nature to a ch. 39, F.S., dependency proceeding and requires similar findings regarding parental fitness. Chapter 751, F.S., also specifically references ch. 39, F.S., and requires the court to make findings that would support an adjudication of dependency if the temporary custody petition was contested. However, it does not appear that the lack of appointed counsel in a ch. 751, F.S., proceeding is necessarily a violation of a constitutional right—the right to raise one’s own children⁶ because the constitutional right to counsel only extends to cases where the parent faces a permanent loss of parental rights or when a parent may be charged with criminal child abuse.⁷ However, it is possible that the facts giving rise to a temporary loss of parental rights through an award of temporary custody may later form the basis for a petition to terminate parental rights.⁸

⁶ *S.B. v. Dep’t of Children & Families*, 851 So. 2d 689, 692-693 (Fla. 2003); *In Interest of D.B.*, 385 So. 2d 83, 90 (Fla. 1980).

⁷ *S.B.*, 851 So. 2d at 692-693.

⁸ See s. 39.806, F.S., grounds for termination of parental rights.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrase "or similar jurisdiction" on line 82 of the bill is confusing and perhaps should be removed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.

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A bill to be entitled

An act relating to temporary custody of a child by an extended family member or putative father; amending s. 751.011, F.S.; defining the term "extended family member"; amending s. 751.02, F.S.; authorizing an extended family member to bring a proceeding in court to determine the temporary custody of a child; amending s. 751.03, F.S.; specifying the information that must be included in a petition for temporary custody by an extended family member or putative father; providing that only an extended family member or putative father may file a petition for temporary custody under ch. 751, F.S.; amending s. 751.05, F.S.; providing that either or both of the child's parents may petition the court to modify the order granting temporary custody under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 751.011, Florida Statutes, is amended to read:

751.011 Definitions.--As used in ss. 751.01-751.05, the term:

(1) "Extended family member" is any person who is a relative:

(a) Within the third degree by blood or marriage to the parent or stepparent of a child and who is caring full time for that child in the role of substitute parent; or

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(b) Within the third degree by blood or marriage to the parent or stepparent of a child and who is caring full time for that child, and a half-brother or half-sister of that child, in the role of substitute parent ~~family composed of the minor child and a relative of the child who is the child's brother, sister, grandparent, aunt, uncle, or cousin.~~

Section 2. Section 751.02, Florida Statutes, is amended to read:

751.02 Determination of temporary custody proceedings; jurisdiction.--Any extended family member ~~relative~~ of a minor child who has the signed, notarized consent of the child's legal parents, or any extended family member ~~relative~~ of the child, including a putative father, with whom the child is presently living, may bring proceedings in the circuit court to determine the temporary custody of the child. A putative father may bring a proceeding for temporary custody only when he is unable to perfect personal service of process upon the mother of the child. When the putative father is able to perfect personal service of process upon the mother of the child, he must petition for custody and other relief, including the establishment of his paternity of the child, under chapter 742.

Section 3. Section 751.03, Florida Statutes, is amended to read:

751.03 Petition for temporary custody; contents.--Each ~~Every~~ petition for temporary custody of a minor child must be verified by the petitioner and must contain statements, to the best of petitioner's knowledge and belief, showing:

(1) The name, date of birth, and current address of the

child;

(2) The names and current addresses of the child's parents;

(3) The names and current addresses of the persons with whom the child has lived during the past 5 years;

(4) The places where the child has lived during the past 5 years;

(5) Information concerning any custody proceeding in this or any other state with respect to the child;

(6) The residence and post office address of the petitioner;

(7) The petitioner's relationship to the child, including the circumstances leading the petitioner to believe he is the natural father of the child when the petitioner is the putative father; and

(8) The consent of the child's parents, or the circumstances of the child's current living situation with the petitioner, including all information concerning the fitness of the parents to raise the child, including information concerning whether either parent has abused, abandoned, or neglected the child;

(9) Any temporary or permanent child support, attorney's fees, costs, and disbursements;

(10) Whether an order of protection governing the parties or a party and a minor child of the parties or party is in effect and, if so, the court or similar jurisdiction in which the order was entered;

(11) That it is in the best interests of the child for the

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petitioner to have custody of the child; and

(12)~~(9)~~ A statement of the period of time the petitioner is requesting temporary custody, including a statement of the reasons supporting that request.

Only an extended family member or putative father may file a petition under this chapter.

Section 4. Subsection (7) of section 751.05, Florida Statutes, is amended to read:

751.05 Order granting temporary custody.--

(7) At any time, either or both of the child's parents may petition the court to modify or terminate the order granting temporary custody upon a finding that the parent requesting the termination of the order is a fit parent, or by consent of the parties.

Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 109

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Civil Justice Committee
Representative(s) Anderson offered the following:

Amendment

Remove line 82 and insert:
effect and, if so, the court in which

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. 109

COUNCIL/COMMITTEE ACTION

2

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Civil Justice Committee
Representative(s) Anderson offered the following:

Amendment (with directory and title amendment)

Between lines 99 and 100, insert:

(8) Upon termination of the order granting temporary custody, the extended family member may petition the court to allow visitation with the child. The court shall consider the best interests of the child based upon the child's emotional and psychological needs and attachment to the extended family member who has served as a substitute parent.

===== D I R E C T O R Y A M E N D M E N T =====

Remove line(s) 92-93 and insert:

Section 4. Subsection (7) is amended and subsection (8) is added in section 751.05, Florida Statutes, to read:

===== T I T L E A M E N D M E N T =====

Remove line(s) 15 and insert:

temporary custody under certain circumstances; providing that an extended family member may petition the court for visitation

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

22 upon termination of the temporary custody order; providing
23 criteria; providing
24

2

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 157 Homestead Assessments
SPONSOR(S): Littlefield
TIED BILLS: None **IDEN./SIM. BILLS:** SB 264

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Bond	Bond
2) Local Government Council			
3) Finance & Tax Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

The 1992 Save Our Homes amendment to the Florida Constitution limits annual increases in the assessed value of homestead real property. It has the effect of providing substantial tax relief to Florida homeowners. The limit is not transferable to a new owner of the property because the constitutional provision requires reassessment of the property upon a change in ownership of the property.

This bill provides that the act of adding an additional co-owner is not a change in ownership requiring an increase in the assessed value of homestead real property. However, should any new co-owner apply for a homestead exemption on the property, the application will be considered a change in ownership requiring an increase in the assessed value of the real property.

The bill does not appear to have a fiscal impact on state government. This bill may have an unknown, but likely minimal, fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes -- This bill may assist individuals who, under current law, may accidentally stumble into increased property taxes bill because of a misunderstanding regarding estate planning.

B. EFFECT OF PROPOSED CHANGES:

Background

The local ad valorem tax is an annual tax levied by local governments based on the value of real and tangible personal property as of January 1 of each year. Florida's Constitution prohibits the state government from levying an ad valorem tax except on intangible personal property. The taxable value of real and tangible personal property is the fair market value of the property adjusted for any exclusions, differentials, or exemptions allowed by the constitution or the statutes. Tax bills are mailed in November of each year based on the previous January 1st valuation and payment is due by the following March 31.¹ Local ad valorem tax revenues in Florida were approximately \$22.4 billion in 2004.²

Article VII, s. 6, Fla.Const., authorizes an exemption from ad valorem taxation for homestead property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another who is legally or naturally dependent upon the owner. The value of the homestead exemption is currently \$25,000 of the assessed value of the real estate.

In 1992, the electorate adopted an amendment to art. VII, s. 4, Fla.Const., known as the "Save Our Homes" amendment. The amendment limits increases in the ad valorem taxation on homestead real property by limiting increases in the assessed value of such property. The amendment levied a base year "just value" assessment for each homestead as of January 1, 1994, and restricts subsequent increases in assessments to the lower of either (a) three percent of the prior year's assessment, or (b) a percent change in the Consumer Price Index. Homestead real property purchased after 1994 has a base year "just value" set in the first year that the exemption is available, with the same limits on future increases in the assessed value. In 2004, the Save Our Homes amendment provided approximately \$4.5 billion in property tax relief to Florida homeowners.³

The limitation on future increases in the assessed value of homestead real property is only available to a current owner of the homestead real property. Article VII, s. 4(c)3., Fla.Const., provides:

After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.

The statutory definition of a change of ownership is codified in s. 193.155, F.S., which provides:

(3) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change in ownership means any sale, foreclosure, or transfer of legal title or beneficial

¹ 2005 Florida Tax Handbook, p. 136, available from the House Finance & Tax Committee.

² 2005 Florida Tax Handbook, p. 135.

³ 2005 Florida Tax Handbook, p. 139.

title in equity to any person, except as provided in this subsection. There is no change of ownership if:

(a) Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:

1. The transfer of title is to correct an error; or
2. The transfer is between legal and equitable title;

(b) The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;

(c) The transfer occurs by operation of law under s. 732.4015; or

(d) Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner.

It is not unusual for a homeowner to want to add an additional co-owner to their property. One common reason for this type of transaction is where an elderly person wants to add adult children as owners in an attempt to avoid probate. This type of transaction, however, is deemed a change in ownership that will result in an increase in the assessed value of the property (that is, a loss of the Save Our Homes benefit) in the year following the transaction.⁴

Effect of Bill

This bill amends s. 193.155, F.S., to provide that the act of adding an additional co-owner is not a change in ownership requiring an increase in the assessed value of homestead real property. However, should any new co-owner apply for a homestead exemption on the property, the application will be considered a change in ownership requiring an increase in the assessed value of the real property.

C. SECTION DIRECTORY:

Section 1 amends s. 193.155, F.S., to provide additional exceptions applicable to the Save Our Homes amendment.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁴ See:

<http://pqasb.pqarchiver.com/sptimes/887477751.html?MAC=707a8e7ae0b21690200d46a180abdacb&did=887477751&FMT=FT&FMTS=FT&date=Aug+25%2C+2005&author=HELEN+HUNTLEY&pub=St.+Petersburg+Times&printformat=&desc=Many+are+trying+to+save+that+tax+cap>

1. Revenues:

Minimal. See fiscal comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may keep an individual from accidentally causing an increased property tax assessment required under s. 193.155, F.S., which would cause increased property tax bills.

D. FISCAL COMMENTS:

This bill is expected to have a minimal negative fiscal impact on local government revenues. The usual reason for recording a deed that adds an owner is for estate planning purposes. However, such estate planning can be accomplished through other means. Individuals will generally refrain from conducting activities that have significant tax cost where there is an alternative without tax cost.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.⁵ This bill appears to be consistent with the constitutional provision that provides that the legislature is to define a change in ownership.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill refers to adding an additional person to the title. The phrase is not an accurate reflection of technical terminology used in real property transactions, and perhaps should be amended to be more accurate.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a

⁵*Sebring Airport Authority v. McIntyre*, 783 So.2d 238, 247 (Fla. 2001).

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A bill to be entitled

An act relating to homestead assessments; amending s. 193.155, F.S.; providing an additional criterion for determining no change in ownership of homestead property for homestead assessment purposes; specifying a condition for a change in ownership; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.--Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption.

(3) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change in ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except as provided in this subsection. There is no change of ownership if:

(a) Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:

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1. The transfer of title is to correct an error; ~~or~~

2. The transfer is between legal and equitable title; or

3. The change or transfer merely adds an additional person
or persons to the title and none of the persons added apply for
homestead exemption on that property. Notwithstanding this
subparagraph, there is a change of ownership if a person who was
added to a title as described in this subparagraph applies for a
homestead exemption on the property;

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 157

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1

Council/Committee hearing bill: Civil Justice

Representative(s) Littlefield offered the following:

Amendment

Remove line(s) 31-36 and insert:

3. The change or transfer is by an instrument whereby the owner is listed as both grantor and grantee of the real property, and one or more other individuals are additionally named as grantee. However, should any individual who is additionally named as a grantee apply for a homestead exemption on the property, the application shall be considered a change of ownership.

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